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In re Application of :
Ji et al :
Serial No.: 09/017,715 : PETITION DECISION
Filed: 3 February 1998 :
Attorney Docket No.: 1488.0810003 :

This is in response to applicants' petition filed under 37 CFR 1.144 on 10 August 2001, to request that the restriction Requirement be withdrawn.

A review of the file shows that the originally filed claims were restricted into three groups as set forth below, in Office action mailed 6/7/99 as Paper no 7.

Group I	Claims 1-9, 13 drawn to a polynucleotide
Group II	Claims 10-11, 14 drawn to a polypeptide
Group III	Claim 12, drawn to an antibody

Applicant elected Group I with traverse in Paper no 9, filed 7/21/99. The traverse concerned the search burden of examining both Groups I and II. In Paper no 11, filed 7/23/99, Applicant canceled claims 1-9 and 13 and added new claims 16-78, drawn to polynucleotides comprising fragments of SEQ ID NO 1 and claim 79, drawn to polynucleotides comprising fragments of SEQ ID NO 12. Applicants stated that Claims 16-79 represent the invention of Group I.

The Examiner responded to the traverse and made the restriction final in Office Action mailed 9/22/99 as Paper no 12. Newly submitted claim 79 was withdrawn from examination as being directed to an invention that is independent or distinct from the invention as originally claimed. Elected Group 1 (original claims 1-9 and 13; replaced with new claims 16-78) is drawn to a polynucleotide product, SEQ ID NO: 1. In contrast, new claim 79 is drawn to a materially different polynucleotide product, SEQ ID NO: 12.

The Petition first submits that a reasonable number of independent and distinct nucleotide sequences, usually up to ten, are permitted to be claimed in a single application and refers

to the OG Notice of 19 November 1996 and MPEP 803.04. It is noted that the claims as originally filed were drawn to SEQ ID No 1. Claims directed to SEQ ID NO: 12 were properly withdrawn as being directed to a materially different invention from the one originally claimed. Additionally, the O.G. Notice set for a range of sequences that were permitted, not required, to be examined. One sequence is within that range.

The Petition further states that SEQ ID NO: 1 and SEQ ID NO: 12 may be patentably distinct. This statement does not clearly meet the level of evidence required by MPEP 2434, to show that the different nucleotide sequences do not cover independent and distinct inventions. Applicants are reminded that they may petition under 37 CFR 1.181 for examination of additional sequences by providing such evidence.

Therefore the petition is DENIED.

Should there be any questions with regard to this decision, please contact Julie E. Burke, Ph.D. by letter addressed to the Group Director, Technology Center 1600, Washington, DC 20231, or by telephone at (703) 308-7553 or by facsimile transmission at (703) 305-7939.

John Doll
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